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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 MARTIN ENG LEE, PIONEER 74 LOTS,
12 LLC,

13 Plaintiffs,

14 v.

15 BYRNE'S SPECIAL WORKS, LLC; and
16 DOES 1-10, inclusive,

17 Defendants.
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Case No. 3:24-cv-03629-RFL

**DEFENDANT'S NOTICE OF MOTION AND
MOTION FOR RULE 11 SANCTIONS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: January 7, 2025
Time: 10:00 a.m.
Ctrm: 15

1 **NOTICE OF MOTION AND MOTION**

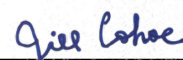
2 PLEASE TAKE NOTICE that on January 7, 2025, at 10:00 a.m., or as soon thereafter as
3 counsel may be heard before the Honorable Rita F. Lin in Courtroom 15 of the United States
4 District Court, Northern District of California, San Francisco Division, 450 Golden Gate Avenue,
5 San Francisco, California, defendant Byrne's Special Works LLC ("Defendant") will and hereby
6 does move for this Court to impose sanctions on Plaintiffs and their counsel under Federal Rule
7 Civil Procedure 11 and the Court's inherent power. Among other things, the Complaint lacks
8 subject matter jurisdiction, is barred by res judicata and the statute of limitations, fails to state a
9 claim, is frivolous and was filed in bad faith. *See* Fed. R. Civ. P. 11(b)(1) and (2). Defendant
10 therefore seeks an order from the Court: (1) dismissing the Complaint with prejudice; and (2)
11 awarding to Defendant the reasonable fees and expenses it incurred in presenting this Motion and
12 the previously filed Motion to Dismiss. *See* Fed. R. Civ. P. 11(c)(1), (2), (4); *Goodyear Tire &*
13 *Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1184 (2017). As set forth in the Declaration of Jill K.
14 Cohoe, Defendant seeks to recover monetary sanctions in the amount of \$11,230.50 against
15 Plaintiffs and their counsel of record, Reshma Kamath, jointly and severally.

16 This Motion is based on this Notice of Motion and Motion, the Memorandum of Points
17 and Authorities, the accompanying declaration and exhibits thereto, the documents on file with
18 the Court and such further evidence and argument as the Court may permit.

19 Dated: November 15, 2024

20 STEYER LOWENTHAL BOODROOKAS
21 ALVAREZ & SMITH LLP

22 By:



23 Jeffrey H. Lowenthal

24 Jill K. Cohoe

25 Attorneys for Defendant

26 Byrne's Special Works, LLC

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Byrne's Special Works LLC ("Defendant") is the owner of the real property
4 commonly known as 939 Lombard Street, San Francisco, California (the "Subject Property"), the
5 property that is the subject of the Complaint in this Action. Defendant purchased the Subject
6 Property from JP Morgan Chase Bank ("Chase") in 2018. Chase acquired the Subject Property
7 through a nonjudicial foreclosure sale in 2011. Plaintiff Martin Eng ("Eng") owned the Subject
8 Property prior to losing it in foreclosure and alleges that in 2008, during his ownership, he
9 recorded a purported restrictive covenant (the "Restrictive Covenant") precluding all construction
10 work at the Subject Property.

11 On May 23, 2018, Defendant initiated the case *Byrne's Special Works LLC v. Eng*, San
12 Francisco County Superior Court case no. CGC-18-566741 (the "Quiet Title Action") against
13 Eng, plaintiff Pioneer 74 Lots, LLC ("Pioneer" and collectively with Eng, "Plaintiffs"), and other
14 entities owned or related to Eng that appeared to claim an interest in the Subject Property.
15 Despite Eng's exhaustive efforts to obstruct entry of judgment - including filing seven
16 bankruptcies on behalf of defendant entities that Eng claims are controlled by him, filing multiple
17 motions to set aside default, and filing multiple appeals – on April 12, 2021, the San Francisco
18 Superior Court entered judgment quieting title to the Property in favor of Defendant and
19 expressly cancelling and expunging the Restrictive Covenant and declaring that Plaintiffs have no
20 right, title, or interest in the Subject Property. Eng's subsequent attempts to set aside and appeal
21 the Judgment were unsuccessful.

22 Although Defendant's ownership of the Subject Property has been conclusively litigated,
23 Eng continues to seek yet another bite at the apple, this time in Federal Court, filing a new
24 complaint that arises from Defendant's acquisition of the Subject Property and the Court's
25 determination that Defendant is the rightful owner. As will be demonstrated herein, the Court
26 should grant Defendant's Rule 11 Motion, dismiss the Complaint, and impose monetary sanctions
27 against Eng and his counsel, Reshma Kamath, for filing this frivolous Complaint.

28 Eng has been declared a vexatious litigant in both California State Court and the Northern

1 District, affirmed by the Ninth Circuit. In orders sanctioning Eng for his conduct, the Northern
2 District has noted that Eng “engage[s] in the litigation version of asymmetrical warfare,” as he
3 knows that he can file complaints for little cost and require defendants to “expend tens of
4 thousands of dollars defending even nuisance suits.” *Eng v. Marcus & Millichap Co.*, 2011 WL
5 2175207 (N.D. Cal. June 3, 2011) at *3. Over a decade ago, the Court noted that Eng “has been a
6 party to approximately 100 suits, roughly half as a plaintiff” and admonished him for re-filing the
7 same complaint in Federal court after it has been dismissed in State court. *Id.* at *4-5.
8 Apparently, this and the multiple other orders subsequently entered against Eng by various courts
9 admonishing his conduct as a vexatious litigant have been ineffective in deterring Eng from
10 continuing to engage in such conduct.

11 Eng is apparently now aided in his frivolous and bad faith pursuit by an attorney, Reshma
12 Kamath, to get around the prohibition against initiating new litigation in pro se that has been
13 imposed against Eng for years in both Federal and California state courts. Kamath also appears to
14 be a serial litigator, filing no less than six complaints in pro per in the Northern District in the last
15 two years. Kamath has likewise been reprimanded for bad faith filings and disrespectful conduct
16 in court, including in the recent case of *Czech v. Herrera*, 2023 WL 7968410 (2d Cal. Nov. 17,
17 2023), where the court sanctioned her for “unfounded and offensive accusations” against the
18 court, filing “meritless” motions, and refusing to cease her conduct even when the court reported
19 her to the State Bar. *Id.* at *5; *see also Kar v. Patel*, N.D. Cal., case no. 4:23-cv-02064-YGR,
20 Docket #87, Oct. 16, 2023 (dismissing complaint and referring Ms. Kamath to Standing
21 Committee on Professional Conduct under Local Rule 11-6(a)(1) “in light of unfounded
22 allegations and apparent unprofessional conduct”); *Jenkins v. Jiminez*, C.D. Cal., case no. 8:23-
23 cv-01317-JWH-DFM, Docket #69 (finding Kamath in contempt of Court).

24 There is no question that a reasonable attorney would not have filed this Complaint, which
25 lacks Subject Matter Jurisdiction, is barred by res judicata and the statute of limitations, and fails
26 to state a claim under any viable legal theory. Accordingly, Defendant respectfully requests an
27 Order dismissing the Complaint and awarding Defendant the fees and expenses incurred in filing
28 this Motion and its Motion to Dismiss pursuant to Rule 11.

II. RELEVANT BACKGROUND

A. **THE QUIET TITLE ACTION CONCLUSIVELY DETERMINED DEFENDANT OWNS THE SUBJECT PROPERTY AND PLAINTIFFS HAVE NO INTEREST THEREIN**

On May 23, 2018, Defendant initiated the Quiet Title Action, seeking a judgment quieting title to the Subject Property and the cancellation of instruments clouding the Subject Property's title recorded by Eng, entities under his control (including Pioneer), and/or his family members. On June 21, 2021, the Court entered Judgment (the "Quiet Title Judgment"), holding that Defendant "is the sole owner in fee simple" of the Subject Property and that Eng, Pioneer, and the related entities "have no right, title, estate, interest, or lien in or against the Subject Property." The Quiet Title Judgment further provides that the 2008 Restrictive Covenant is "cancelled, null and void, and without legal force or effect as to the Subject Property." Eng's appeal of the Quiet Title Judgment was subsequently dismissed. *Byrnes Special Works, LLC v. Eng* (1st Dist. Cal. June 30, 2022) No. A163012.

Not only has title to the Subject Property been affirmed in Defendant, but all of Eng's previous challenges to the foreclosure sale have been conclusively resolved against him. *See Eng v. Dimon*, No. C 11-3173, 2012 WL 3659600 (N.D. Cal. Aug. 24, 2012) (dismissing wrongful foreclosure complaint); *Eng v. Washington Mutual Bank*, No. C-12-05062, 2013 WL 622363 (N.D. Cal. Feb 14, 2013) (dismissing complaint and holding that "[b]ecause res judicata would apply to any action regarding the foreclosure of the Lombard property, it would be futile to allow plaintiff to amend his complaint again."), *aff'd* (9th Cir. 2014) 586 Fed.Appx. 376 ("The district court properly dismissed Eng's action as barred by the doctrine of res judicata because Eng alleges claims arising out of the same loan transaction and related foreclosure proceedings against the same defendants in a prior federal action in which there was a final judgment on the merits.").

B. **ENG AGAIN ATTEMPTS TO CHALLENGE DEFENDANT'S OWNERSHIP OF THE PROPERTY THOUGH THIS ACTION**

On June 16, 2024, Eng initiated the instant action, again trying to re-litigate the validity of the foreclosure sale and Defendant's ownership of the Subject Property. Plaintiffs purport to allege the following ten causes of action against Defendant: (1) Declaratory Judgment; (2) Breach

1 of Contract; (3) Nuisance; (4) Civil Conspiracy; (5) Violation of Truth in Lending Act; (6)
2 Violation of Fair Lending Practices; (7) Estoppel; (8) Eminent Domain; (9) Financial Elder
3 Abuse; and (10) Violation of Cal. Civil Code section 2924 et seq. All of these claims stem from
4 Plaintiffs' allegation that the foreclosure sale was wrongful, Plaintiffs are the rightful owners of
5 the Subject Property, and Defendant is acting in violation of the Restrictive Covenant. *See*
6 Docket #1, Complaint, ¶¶6-15, 18-19, 21, 23-28, 39-40, 85, 92-93.

7 Eng is a vexatious litigant that cannot initiate a new case in pro se. *Eng v. Washington*
8 *Mut. Bank, FA*, 586 Fed.Appx. 376, 377 (9th Cir. 2014) (upholding declaration that Eng is a
9 vexatious litigant and pre-filing order entered against him); *Eng v. Yoch* (Cal. Ct. App., Dec. 28,
10 2011, No. A130714) 2011 WL 6820387, at *3 (concluding the trial court properly found plaintiff
11 to be a vexatious litigant" and issuing a pre-filing order limited to "any new *pro se* actions in this
12 Court that name as parties Defendants or other individuals associated with this action"). As such,
13 he has engaged the help of an attorney who similarly has been found to initiate frivolous litigation
14 for improper purposes.

15 III. DISCUSSION

16 "Filing a complaint in federal court is no trifling undertaking. An attorney's signature on
17 a complaint is tantamount to a warranty that the complaint is well grounded in fact and existing
18 law..." *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002) (internal quotation marks
19 omitted). Rule 11 requires an attorney who has "present[ed] to the court a pleading, written
20 motion or other paper – whether by signing, filing, submitting, or later advocating it" to certify
21 "to the best of the person's knowledge, information, and belief, formed after an inquiry
22 reasonable under the circumstances" that the claims are warranted by existing law and that "the
23 factual contentions have evidentiary support." Fed. R. Civ. Proc. 11(b)(3). An objective standard
24 is applied to determine reasonableness under Rule 11. *Conn v. Borjorquez*, 967 F.2d 1418, 1421
25 (9th Cir. 1992).

26 The Court is empowered to "impose an appropriate sanction on any attorney, law firm, or
27 party" that violates Rule 11(b). *See* Fed. R. Civ. Proc. 11(c)(4). Nonmonetary sanctions may
28 include striking the offending pleading. Fed. R. Civ. Proc. advisory committee notes to 1993

1 amendment (listing “striking the offending paper” as possible Rule 11 sanction). The Court may
2 consider a range of factors in deciding whether to impose monetary sanctions, including
3 “[w]hether the improper conduct was willful, or negligent;” “whether it infected the entire
4 pleading, or only one particular count or defense;” “what effect it had on the litigation process in
5 time or expense;” “whether the responsible person is trained in the law;” and “what amount,
6 given the financial resources of the responsible person, is needed to deter that person from
7 repetition in the same case.” *Id.*

8 **A. RULE 11 SANCTIONS ARE APPROPRIATELY IMPOSED AGAINST**
9 **PLAINTIFFS AND THEIR COUNSEL BECAUSE THE COMPLAINT IS**
10 **FRIVOLOUS**

11 Rule 11 sanctions are properly imposed where a frivolous complaint is filed. *Holgate v.*
12 *Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005); *see also Greenberg v. Sala*, 822 F.2d 882, 885
13 (“frivolous complaints” subject party to Rule 11 sanctions because they “sap the time of judges,
14 forcing parties with substantial disputes to wait in a longer queue...”). Where, as here, “the
15 complaint is the primary focus of Rule 11 proceedings, a district court must conduct a two-prong
16 inquiry to determine (1) whether the complaint is legally or factually ‘baseless’ from an objective
17 perspective, and (2) if the attorney has conducted ‘a reasonable and competent inquiry’ before
18 signing and filing it. *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002). As will be
19 demonstrated herein, the Complaint is objectively baseless and Plaintiffs’ attorney plainly did not
20 make any inquiry concerning the viability of the claims prior to initiating this action.

21 **1. The Court Lacks Subject Matter Jurisdiction Over the Claims**

22 As an initial matter, Plaintiffs’ claims fail because this Court does not have subject matter
23 jurisdiction. “A federal court has subject matter jurisdiction over an action that either arises
24 under federal law, or when there is complete diversity of citizenship between the parties and the
25 amount in controversy exceeds \$75,000.” *Tosco Corp. v. Communities for a Better Environment*,
26 236 F.3d 495, 499 (9th Cir. 2001); *see also* 28 U.S.C. § 1331, 1332; *Warren v. Fox Family*
27 *Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003) (complaint may be dismissed for lack of
28 subject matter jurisdiction where grounds appear on “face of the complaint”).

The Court lacks subject matter jurisdiction over the Complaint because no claim under

1 federal law is stated. Plaintiffs purport to allege a claim for Violation of Truth in Lending Act, 15
2 U.S.C. § 1601, *et seq.*, as the fifth cause of action. However, this is a frivolous claim, as the act
3 imposes obligations on “furnishers of information” who provide information to credit reporting
4 agencies. 15 U.S.C. § 1861s-2(a). Defendant is not alleged to have furnished any consumer
5 information to any credit reporting agency, and thus, the claim fails as a matter of law. *See Poore*
6 *v. Simpson Paper Co.*, 566 F.3d 922 (9th Cir. 2009) (frivolous claim cannot establish subject
7 matter jurisdiction).

8 Nor is there complete diversity of citizenship between the parties. Plaintiffs allege that
9 Martin Eng is a California resident and Defendant is a California limited liability company.
10 Docket #1, Complaint, ¶¶1-2; *see Grancare, LLC v. Thrower by & through Mills*, 889 F.3d 543,
11 548 (9th Cir. 2018) (diversity jurisdiction requires complete diversity, “meaning that each
12 plaintiff must be of a different citizenship from each defendant.”).

13 “Whenever it appears by suggestion of the parties or otherwise that the court lacks
14 jurisdiction of the subject matter, the court shall dismiss the action.” Fed. R. Civ.P. 12(h)(3).
15 Accordingly, Plaintiffs’ claims fail as a matter of law because the Court lacks subject matter
16 jurisdiction over the dispute.

17 **2. Res Judicata Bars Claims Arising from Defendant’s Ownership of the** 18 **Subject Property**

19 “Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a
20 second suit between the same parties or parties in privity with them.” *Mycogen Corp. v.*
21 *Monsanto Co.*, 28 Cal.4th 888, 896 (2002). Res judicata arises if a second suit involves: (1) the
22 same cause of action; (2) between the same parties, or those in privity; (3) after a final judgment
23 on the merits in the first suit. *Id.*; *see also Lucido v. Superior Court*, 51 Cal.3d 335, 341 (1990).
24 “If claim preclusion is established, it operates to bar relitigation of the claim altogether.” *DKN*
25 *Holdings LLC v. Faerber*, 61 Cal.4th 813, 824 (2015).

26 “California’s res judicata doctrine is based upon the primary right theory,” that is, “even
27 where there are multiple legal theories upon which recovery might be predicated, one injury gives
28 rise to only one claim for relief.” *Mycogen*, *supra*, 28 Cal.4th at 904. Accordingly, res judicata

bars not only the same claim, but different claims asserting the same primary right. Furthermore, res judicata also bars unasserted claims *which could have been raised* if such claims relate to the subject-matter and are relevant to the issues of the first action. *Thibodeau v. Crum*, 4 Cal.App.4th 749, 755 (1992). Thus, res judicata also prevents a party from withholding claims in an attempt to litigate related claims in consecutive actions. *Id.*

All of these elements are met here. The Quiet Title Action was between Plaintiffs and Defendant over Plaintiffs' claimed ownership of the Subject Property and the validity of the Restrictive Covenant. The Quiet Title Judgment was entered in favor of Defendant, conclusively determining that it is the fee simple owner of the Subject Property and that the Restrictive Covenant is null and void with no force or effect. As such, all of Plaintiffs' claims in the Complaint, which purport to arise out of Plaintiffs' loss of the Property and Defendant's acquisition of the Property, are barred by the doctrine of res judicata.

3. The Complaint is Barred by the Statute of Limitations

The nonjudicial foreclosure sale of the Subject Property occurred in 2011 and Defendant acquired the Subject Property on April 27, 2018. Plaintiffs initiated this action on June 16, 2024, or over six years later. Plaintiffs' claims are therefore time-barred under any purported theory of liability asserted in the Complaint: breach of contract – four years (Cal. Code Civ. Proc. §337(a)); nuisance – three years (*Shamisan v. Atlantic Richfield Co.*, 107 Cal.App.4th 967, 979 (2003)); Violation of Truth in Lending Act and of Fair Lending Practices – one year (15 U.S.C. §1640(e)); financial elder abuse – four years (Welf. & Inst. Code, §15657.7); and wrongful foreclosure – three years (*Susilo v. Wells Fargo Bank, N.A.*, 796 F.Supp.2d 1177, 1195 (C.D. Cal. 2011)). The statute of limitations for the declaratory relief, civil conspiracy, and estoppel claims are “determined by the nature of the underlying obligation sought to be adjudicated.” *BASF Corp. v. Cesare's Collision Repair & Towing, Inc.*, 364 F.Supp.3d 1115, 1122 (E.D. Cal. 2019); *see also Maheu v. CBS*, 201 Cal.App.3d 662, 673 (1988). As such, the Complaint is frivolous under an objective standard because all claims are time-barred.

4. The Complaint Fails to State a Claim Under any Legal Theory

Even if the claims were not barred by the doctrine of res judicata and the statute of

1 limitations, no claim is stated against Defendant under any cognizable legal theory. To state a
2 plausible claim for relief, the complaint “must contain sufficient allegations of underlying facts”
3 to support its legal conclusions. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). In other
4 words, “to survive a motion to dismiss, a complaint ‘must contain sufficient factual matter,
5 accepted as true, to state a claim to relief that is plausible on its face,’ which means that a plaintiff
6 must plead sufficient factual content to ‘allow[] the Court to draw the reasonable inference that
7 the defendant is liable for the misconduct alleged.” *BHRS Group, LLC v. Brio Water Technology,*
8 *Inc.*, 553 F.Supp.3d 793, 798 (C.D. Cal. 2021), *quoting Ashcroft v. Iqbal*, 556 U.S. 662, 678
9 (2009). Here, Plaintiffs have failed to allege sufficient facts supporting any of the purported ten
10 claims for relief asserted in the Complaint.

11 **a. Declaratory Relief (First Cause of Action)**

12 Plaintiffs purport to seek a judicial declaration concerning the Restrictive Covenant,
13 including that it precludes construction work at the Subject Property. Not only is this claim
14 barred by res judicata, as discussed above, but even if it were not, any Restrictive Covenant
15 recorded in 2008 would have been extinguished by the foreclosure sale under Chase’s senior deed
16 of trust. *National Wildlife Fed. v. Espy*, 45 F.3d 1337, 1342 (9th Cir. 1995) (“foreclosure by
17 superior lienholder eliminates junior interests”); *see also* Miller & Starr, 4 Cal. Real Est. § 10:100
18 (4th ed.) (“The foreclosure sale eliminates or ‘wipes out’ all interests that were junior in priority
19 to the deed of trust or mortgage; the title of the purchaser is not subject to such junior interests,
20 even though they attached to the property before the foreclosure sale.”). The Restrictive
21 Covenant fails for the independent reason that under California law, a covenant that runs with the
22 land cannot be created by a single owner of two parcels, like Plaintiffs attempted to do here.
23 *Soman Properties, Inc. v. Rikuo Corp.*, 24 Cal.App.4th 471, 482 (1994).

24 Simply put, there is no ongoing controversy to be adjudicated between the parties, as the
25 Restrictive Covenant has been conclusively determined to be invalid. The Court has further
26 conclusively determined that Defendant is the owner of the Property and that Plaintiffs have no
27 interest in the Property.
28

1 **b. Breach of Contract (Second Cause of Action)**

2 Plaintiffs allege that the Restrictive Covenant is a contract between them and Defendant
3 and that Defendant breached said covenant. This claim fails for the same reasons as the
4 Declaratory Relief claim, as well as because Plaintiffs do not allege facts establishing any
5 contractual relationship whatsoever between Plaintiffs and Defendant.

6 **c. Nuisance (Third Cause of Action)**

7 A public nuisance is “one which affects at the same time an entire community or
8 neighborhood, or any considerable number of persons, although the extent of the annoyance or
9 damage inflicted upon individuals may be unequal.” Cal. Civil Code §3480. A private nuisance
10 is a “non-trespassory interference with the private use and enjoyment of land.” *San Diego Gas &*
11 *Elec. Co. v. Superior Court*, 13 Cal.4th 893, 937 (1996). Under California law, “[b]oth public
12 and private nuisance claims require a showing of substantial and unreasonable interference, either
13 with a public right or with the enjoyment of a plaintiff’s property.” *Coppola v. Smith*, 935
14 F.Supp.2d 993, 1018 (E.D. Cal. 2013).

15 Plaintiffs do not allege facts supporting a claim of “substantial and unreasonable
16 interference” with the rights of the public at large or with Plaintiffs’ rights. All that is alleged is
17 that there is construction on Defendant’s property causing noises from “birds and other animals.”
18 Complaint, ¶32. Plainly, this is insufficient to state a claim for public or private nuisance under
19 California law.

20 **d. Civil Conspiracy (Fourth Cause of Action)**

21 Under California law, “in order to state a cause of action based upon a conspiracy theory
22 the plaintiff must allege the formation and operation of the conspiracy, the wrongful act or acts
23 done pursuant to it, and the damage resulting from such acts.” *State ex rel. Metz v. CCC*
24 *Information Services, Inc.*, 149 Cal.App.4th 402, 419 (2007). “The conspiring defendants must
25 also have actual knowledge that a tort is planned and concur in the tortious scheme with
26 knowledge of its unlawful purpose.” *Kidron v. Movie Acquisition Corp.*, 40 Cal.App.4th 1571,
27 1582 (1995). In stating a claim for conspiracy, “bare legal conclusions, inferences, generalities,
28 presumptions, and conclusions are insufficient.” *State ex rel. Metz, supra*, 149 Cal.App.4th at

1 419; *see also Favila v. Katten Muchin Rosenman LLP*, 188 Cal.App.4th 189, 211 (2010)
2 (“because fraud was the object of the conspiracy alleged by [plaintiff], the claim must be pleaded
3 with specificity”).

4 Plaintiffs do not allege any facts, let alone facts with the requisite specificity, establishing
5 Defendant entered into any conspiracy. Moreover, the only harm alleged by Plaintiffs is the loss
6 of the Property which, as discussed above, has been conclusively resolved in favor of Defendant.

7 **e. Violation of Trust in Lending Act (Fifth Cause of Action)**

8 As discussed above, the Violation of Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*,
9 claim is entirely frivolous, as the Act imposes obligations on “furnishers of information” who
10 provide information to credit reporting agencies. 15 U.S.C. §1861s-2(a). Defendant is not alleged
11 to have furnished any consumer information to any credit reporting agency, and thus, the claim
12 fails as a matter of law.

13 **f. Violation of Fair Lending Practices (Sixth Cause of Action)**

14 This claim is similarly frivolous. There are no allegations that Defendant was a lender or
15 engaged in unfair lending practices.

16 **g. Estoppel - Illegal Permit Building (Seventh Cause of Action)**

17 Plaintiffs apparently allege that Defendant should be estopped from performing
18 construction at the Subject Property under an issued building permit. However, Plaintiffs fail to
19 set forth any facts in support of the conclusory allegation that the permit was “erroneously issued”
20 and fail to state any facts that would support a claim for estoppel.

21 **h. Eminent Domain (Eighth Cause of Action)**

22 The eminent domain claim not only fails because Defendant is not a governmental entity
23 and there are no specific facts alleged establishing the land will be used publicly, but also because
24 Plaintiffs do not have any interest in the Property, as was conclusively determined in the earlier
25 Quiet Title Action. *Rutgard v. City of Los Angeles*, 52 Cal.App.5th 815, 825 (2020) [(“Under our
26 state's Constitution, a public entity's eminent domain power authorizes the condemnation of
27 private property only if “the public interest and necessity” so “require” and the property's owner
28 is “just[ly] compensat[ed]” for the taking. (§ 1240.030, subd. (a); Cal. Const., art I, § 19; *see also*

U.S. Const., 5th Amend; §§ 1240.010, 1240.030.)”); Cal. Code Civ. Proc., §1230.030 *et seq.*

i. Financial Elder Abuse (Ninth Cause of Action)

Under well-established law, statutory causes of action, such as a cause of action for elder abuse, must be pleaded with particularity and every fact essential to the existence of statutory liability must be pleaded. *See, e.g., Richardson-Tunnell v. School Insurance Program for Employees* (2008) 157 Cal.App.4th 1056, 1061 (“statutory causes of action must be pleaded with particularity...every fact essential to the existence of statutory liability must be pleaded”). Plaintiffs do not plead any specific facts establishing that Defendant engaged in financial elder abuse. *See* Cal. Welf. & Inst. Code §15610.30.

j. Violation of California Civil Code §2924

Although the basis of this claim is not entirely clear, it appears that Plaintiffs are again attempting to relitigate the 2011 foreclosure and Defendant’s ownership of the Subject Property. For the reasons set forth in section 2, *supra*, this cause of action fails, as a final decision has been rendered upholding the validity of the foreclosure and Defendant’s ownership.

Therefore, as demonstrated above, the Complaint fails to set forth facts to support any viable claim against Defendant and is objectively frivolous.

B. THE COURT SHOULD DISMISS THE COMPLAINT AND IMPOSE MONETARY SANCTIONS

Defendant seeks an order from this Court pursuant to Rule 11 (1) dismissing the Complaint, and (2) awarding Defendant the reasonable fees and expenses incurred in filing this Rule 11 Motion and its Motion to Dismiss. *See* Fed. R. Civ. P. 11(c)(1), (2), (4); *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1184 (2017).

As noted above, the advisory committee notes instruct the Court to consider “[w]hether the improper conduct was willful, or negligent;” “whether it infected the entire pleading, or only one particular count or defense;” “what effect it had on the litigation process in time or expense;” “whether the responsible person is trained in the law;” and “what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case.” Given Eng and his attorney’s demonstrated and extensive history of filing frivolous

1 litigation, and the abject frivolity of the Complaint filed in this action, there can be no question
2 that the imposition of substantial sanctions is appropriate here, including dismissal of the
3 Complaint with prejudice and monetary sanctions to compensate Defendant for having to respond
4 to this meritless lawsuit.

5 Eng has been declared a vexatious litigant in both California State Court and the Northern
6 District, affirmed by the Ninth Circuit. In *Eng v. Washington Mutual Bank, FA*, 2013 WL
7 622363 (N.D. Cal. Feb. 14, 2013), *aff'd*, 586 F.App'x 376 (9th Cir. 2014), a different action filed
8 by Eng over a decade ago attempting to challenge the very same foreclosure sale, the Court
9 dismissed the complaint as barred by the doctrine of res judicata and noted that Eng “has been
10 involved in several prior actions against defendants on the Lombard property and foreclosure”
11 and that Eng “has tried to relitigate the same claim multiple times.” *Id.* at *4-5. The Court
12 further noted that Eng is a “repeat offender” in filing frivolous claims and that “Judge Breyer
13 previously found that [Eng] was harassing a different set of defendants by filing suit on the same
14 general claims in both state and federal courts.” *Id.* at *5; *see also Eng v. Marcus & Millichap*
15 *Co.*, 2011 WL 2175207 (N.D. Cal. June 3, 2011) at *5 (finding Eng filed a frivolous complaint in
16 violation of Rule 11); *Eng v. Yoch*, 2011 WL 6820387 (1d Cal. 2011) at *3 (listing several cases
17 initiated by Eng in pro per and decided adversely against him).

18 Eng’s attorney, Reshma Kamath, has likewise been reprimanded for bad faith filings and
19 disrespectful conduct in court, including in the recent case of *Czech v. Herrera*, 2023 WL
20 7968410 (2d Cal. Nov. 17, 2023), where the court sanctioned her for “unfounded and offensive
21 accusations” against the court, filing “meritless” motions, and refusing to cease her conduct even
22 when the court reported her to the State Bar. *Id.* at *5; *see also Kar v. Patel*, N.D. Cal., case no.
23 4:23-cv-02064-YGR, Docket #87, Oct. 16, 2023 (dismissing complaint and referring Ms. Kamath
24 to Standing Committee on Professional Conduct under Local Rule 11-6(a)(1) “in light of
25 unfounded allegations and apparent unprofessional conduct”); *Quintara Biosciences, Inc. v.*
26 *Ruifeng Biztech Inc.*, 2023 WL 7555284 (N.D. Cal. Nov. 13, 2023) (holding Kamath in contempt
27 of Court for violating sanctions orders). In *Schwartzman v. South Coast Tax Resolution, Inc.*,
28 2023 WL 7969843 (2d Cal. Nov. 17, 2023), the Second District, California Court of Appeal

1 imposed sanctions against Kamath, finding that “[f]or over two years, Kamath has persisted in a
2 troubling pattern of behavior...,” including frivolous litigation tactics and outrageous conduct.
3 *Id.* at *10; *see also Kamath v. Alsup et al.*, N.D. Cal., case no. 3:23-cv-06494-GPC (complaint
4 filed by Kamath against district court judges who issued adverse rulings against her).

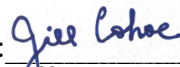
5 “The main objective of [Rule 11] is not to reward parties who are victimized by litigation;
6 it is to deter baseless filings and curb abuses.” *Bus. Guides, Inc. v. Chromatic Commc’ns Enters.,*
7 *Inc.*, 498 U.S. 533, 553 (1991); *see also Christian v. Mattel*, 286 F.3d 1118, 1127 (9th Cir. 2002)
8 (“One of the fundamental purposes of Rule 11 is to reduce frivolous claims, defenses, or motions
9 and to deter costly meritless maneuvers,...thereby avoiding delay and unnecessary expense and
10 litigation.”). Given Plaintiffs and their counsel’s demonstrated willingness to flout the rules of
11 Court and file frivolous complaints, costing litigants and the Court significant time and expense,
12 the imposition of substantial Rule 11 sanctions here will further the statute’s objectives.

13 IV. CONCLUSION

14 For the foregoing reasons, Defendant respectfully requests that the Court dismiss the
15 Complaint and impose monetary sanctions against Plaintiffs and their counsel, Reshma Klamath,
16 including awarding the costs and fees incurred in having to defend against this frivolous suit to
17 Defendant.

18
19 Dated: November 15, 2024

STEYER LOWENTHAL BOODROOKAS
ALVAREZ & SMITH LLP

20
21 By: 
22 Jeffrey H. Lowenthal
23 Jill K. Cohoe
24 Attorneys for Defendant
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26
27
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